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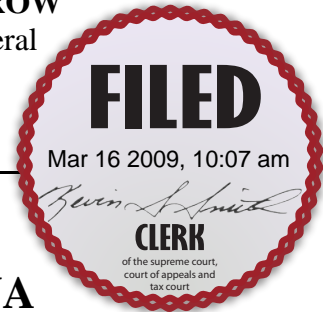
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**IN THE  
COURT OF APPEALS OF INDIANA**

DAVID SNYDER,

Appellant-Defendant,

VS.

No. 71A03-0807-CV-356

JULIANNE MAYFIELD,

Appellee-Plaintiff.

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT

The Honorable Michael G. Gotsch, Judge  
The Honorable Rochelle S. Cotter, Magistrate  
Cause No. 71C01-0302-RS-5

**March 16, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant David Snyder appeals the trial court's judgment finding him in contempt of court and sentencing him to ninety days in the St. Joseph County Jail for failure to pay child support. Upon appeal, Snyder claims that the trial court's judgment amounted to an abuse of discretion given what he alleges was uncontroverted evidence of his inability to work due to a medical condition. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

The instant action originated in St. Joseph Circuit Court on February 13, 2003, pursuant to the Uniform Interstate Family Support Act (UIFSA). On February 18, 2003, the State, on behalf of petitioner Julianne Mayfield, registered a decree from Travis County, Texas, ordering Snyder to pay \$1300 per month in child support for his two children beginning on June 1, 2000. At a March 27, 2003 initial hearing, the trial court set Snyder's child support arrearage, as of November 1, 2002, at \$47,182.48, and it subsequently issued an order registering and confirming the foreign child support.

On October 15, 2003, the State filed an information alleging Snyder was in contempt of the trial court's order, prompting the trial court to issue a rule to show cause order. Snyder's alleged arrearage, as of September 28, 2003, was \$54,932.38, and he had allegedly only paid fifty dollars since the March 27 hearing. Apparently, the parties agreed that Snyder would pay his salary of \$200 per month as Roseland Town Councilman to the court and keep the Child Support Division aware of the status of his real estate dealings.

At a February 17, 2004 hearing, the trial court established an arrearage of \$61,347.98 and ordered Snyder to pay fifty percent of all real estate closing proceeds. The matter was

continued to May 20, 2004. Snyder did not appear at the May 20, 2004 hearing, so the trial court ordered a body attachment and set bond at \$2000, which Snyder posted and the court directed toward his child support obligation.

At a June 4, 2004 hearing, at which Snyder did appear, the trial court determined Snyder's arrearage was \$65,528.98 as of May 31, 2004, that over a nine-month period it had increased by \$10,000 while his payments had amounted to only \$966.50, and that he was therefore in contempt of court. The trial court withheld sentencing.

On July 15, 2004, the trial court ordered Snyder to report to the court his sales and commissions earned from his real estate business. Following an October 7, 2004 hearing, by which point Snyder's arrearage had grown to \$67,668.48, the trial court issued an October 12 order requiring Snyder to pay his part-time salary from the Town of Roseland toward his support obligation, provide a complete accounting of his real estate activity including all commissions earned, and within three days of receipt of such commissions, to pay the court thirty percent of the gross amount.

On November 9, 2005, the trial court issued a report and order finding Snyder in contempt of court for failing to comply with the October 12, 2004 order. In it, the trial court determined that Snyder had failed to report certain earned commissions to the court or pay a percentage of them as ordered, and that he had perhaps sought to avoid liability on certain commissions by "gifting" them to his wife—and in some cases only allegedly "gifting" them to his wife—for purposes of her real estate purchases, all in an effort to avoid his child support obligation.

On May 5, 2006, the State filed an affidavit indicating that on January 19, 2006, it had mailed a notice of intent to suspend or revoke Snyder's real estate license due to his unpaid child support. Following Snyder's unsuccessful appeals of the notice, the Indiana Real Estate Commission suspended Snyder's real estate license on February 9, 2007.

On January 23, 2007, after the case was transferred to a newly created Title IV-D court, the State again filed an information for rule to show cause, after which the trial court issued an order to show cause based upon Snyder's alleged child support delinquency of \$90,633.74. On July 26, 2007, the trial court found Snyder in contempt. Following a September 24, 2007 hearing in which the trial court found Snyder had failed to purge himself of contempt, the court ordered Snyder to serve forty-five days in the St. Joseph County Jail. Snyder subsequently paid \$20,800 to purge himself of contempt.

On April 1, 2008, the State filed an information for rule to show cause alleging Snyder had failed and refused to comply with the March 27, 2003 order requiring him to pay \$1300 per month in child support. The information alleged that Snyder was \$84,050.89 in arrears as of March 28, 2008. On April 9, 2008, the trial court issued an order requiring Snyder to show cause, at an April 25, 2008 hearing, as to why he should not be adjudged in contempt of court.

At the hearing Snyder indicated, with respect to his efforts to find employment, that he "had spoken with different people involved in real estate development and sales." Tr. p. 6. Snyder could not provide the names of the persons he had contacted, nor did he provide records of his inquiries, in spite of his claim that he likely kept such records in his

appointment calendar. Snyder testified that he was on medication and that his doctor and cardiologist had imposed certain work restrictions due to his physical weakness and memory and concentration problems. Snyder introduced a note from Dr. Robert Hruskovich which stated, “Due to ongoing medical issues patient has been unable to adequately perform normal duties of his job.” Defendant’s Exh. 1; Appellant’s App. p. 53. Snyder also introduced a letter from cardiologist Dr. Ahmed A. Latief stating that Snyder had sought treatment on October 8, 2007, that he had had “cardiac workup and treatment, with recurrent persistent symptoms and medication intolerance,” and that he was under Dr. Latief’s care for current symptoms of “chest pain, palpitations, fatigue, memory change, dyspnea on exertion, paroxysmal atrial fibrillation, minimal valvular heart disease, with mild left atrial enlargement.” Defendant’s Exh. 2, Appellant’s App. p. 54. In addition, Snyder’s wife testified that he had been involved in an incident on September 14, 2007, with the Roseland Town Marshall, Mr. Tiller, requiring that he seek medical care for a concussion and a chest contusion, and after which he had multiple problems including fatigue and anxiety. According to Snyder, apart from his possible winnings in his potential lawsuit against Tiller, he had no other assets to satisfy his support obligations.

Following the hearing, the trial court found Snyder in contempt of court and sentenced him to serve ninety days in the St. Joseph County Jail to be served without credit for good time served or until the sum of \$25,000 was paid to reduce his arrearage. In doing so, the trial court made the following remarks:

Mr. Snyder, I have made it clear to you that you need to show some effort to find employment and I made it clear to you at previous hearings that I expected

you to do so. Since September, I have been provided with no evidence that Mr. Snyder has looked for any work. As a matter of fact, he couldn't even recall having looked for any work. He mentioned that he had some kind of calendar, he did not bring that to show proof that he had been looking for employment and I agree . . . regarding the statement from Dr. [Hr]usk[o]vich which states that due to ongoing medical issues, patient has been unable to adequately perform normal duties of his job. That is a far cry from the normal orders that I get from doctors on a regular basis which routinely would state, if the doctor believed a patient to be disabled, it would say he believes the patient is unable to work or disabled. That is not what this says. If there is documentation to that effect that says he is disabled and unable to work, that has not been provided to this Court. There has been no evidence of the attempts to find a job that would accommodate some of the conditions that Mr. Snyder has stated that he has. In terms of this Court's order, I do find Mr. Snyder in contempt. In terms of what I do at this point . . . I am serving as Magistrate of the Circuit Court in terms of my sentencing in this case and I do normally follow the Circuit Court policies in terms of these issues. In doing so last time, when I set the purge amounts on the two different times, one of the things I do need to take into consideration is his ability to pay any purge amount and I take note of the fact that in fact Mr. Snyder did come up with the purge amount. So, I believe that to be evidence that in fact he has in the past been able to show ability to pay even when his testimony has been otherwise in Court. And at this point, I'm gonna find Mr. Snyder in contempt and sentence him to 45<sup>[1]</sup> days in the county jail. The purge amount normally I would set it as double the \$20,800[.00]. Since the whole point is to coerce Mr. Snyder to pay and not to punish him and that is really, honestly, truly my intent here, is not to punish him it is to get him to figure out the point in which he understands he needs to start making his child support payments. I believe that we are not there yet because I don't know what that breaking point is for Mr. Snyder to understand how serious this Court is about him taking these Court orders seriously. I feel that Mr. Snyder has been a mockery to this Court in the fact that he walks in here without any attempts to show that he has applied for jobs other than talking—I'm sorry, let me find the exact phrase—let me find my notes because I want to say this in the record here. He's spoken to people in Real Estate development. He couldn't recall their names but it would probably show up in an appointment calendar. The fact that Mr. Snyder would come to Court attempting to defend himself from this contempt issue without bringing that calendar is further example of Mr. Snyder's disrespect for this

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<sup>1</sup> Noticeably, the trial court's order and the CCS, which indicate the trial court sentenced Snyder to ninety days, conflict with the transcript, which indicates the trial court sentenced Snyder to forty-five days. Neither party points out this discrepancy, and Snyder's challenge is based upon the merits of the contempt finding rather than the length of the sentence.

Court and the fact that I do not believe that he is taking these proceedings seriously. Therefore I am . . . going to set [the purge amount] at \$25,000.00 . . . My intent is to incrementally increase this amount to get to the point that Mr. Snyder understands that he needs to pay his support . . . . This is not a case I believe that Mr. Snyder has—he’s not shown any evidence he’s applied for disability, this is not the “Marks” case, I understand the “Marks” case and it’s been presented and it’s good law, I don’t disagree with that, this is not the “Marks” case.

Tr. pp. 37-39. On April 28, 2008, Snyder filed a motion to correct error which was deemed denied. This appeal follows.

### **DISCUSSION AND DECISION**

Upon appeal, Snyder claims the trial court abused its discretion in holding him in contempt of court. Generally, money judgments are not enforceable by contempt. *Pettit v. Pettit*, 626 N.E.2d 444, 447 (Ind. 1993). However, the proscription against imprisonment for debt in Article I, Section 22 of the Indiana Constitution does not prevent the use of contempt to enforce child support obligations. *Id.* at 445. “[C]ontempt is always available to assist in the enforcement of child support, at least in respect of unemancipated children, including orders to pay accrued arrearages and money judgments against delinquent parents for past due amounts.” *Marks v. Tolliver*, 839 N.E.2d 703, 706 (Ind. Ct. App. 2005) (quoting *Pettit*, 626 N.E.2d at 447).

“Whether a person is in contempt of a court order is a matter left to the trial court’s discretion.” *Mitchell v. Mitchell*, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003) (quoting *Evans v. Evans*, 766 N.E.2d 1240, 1243 (Ind. Ct. App. 2002)). We will reverse the trial court’s finding of contempt only where an abuse of discretion has been shown, which occurs only when the trial court’s decision is against the logic and effect of the facts and

circumstances before it. *Id.* When we review a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* When reviewing a finding of contempt, we accept as true the statement entered by the trial court and will interfere with the trial court's judgment only where it clearly appears that the acts in question are not contemptuous. *Thompson v. Thompson*, 811 N.E.2d 888, 905 (Ind. Ct. App. 2004), *trans. denied*.

The party in contempt bears the burden of demonstrating that his acts were not “willful.” *Emery v. Sautter*, 788 N.E.2d 856, 859 (Ind. Ct. App. 2003), *trans. denied*. With respect of nonpayment of child support, however, the Indiana Supreme Court has held that “[c]ontempt is not appropriate unless the parent has the ability to pay the support due and his failure to do so was willful.” *Pettit*, 626 N.E.2d at 448.

In challenging the trial court's contempt finding, Snyder relies upon *Marks*. In *Marks* this court reversed a contempt finding on sufficiency grounds because there was uncontroverted evidence in the record that the subject father was impoverished—he had no assets or income, received food stamps and lived in a rent-free trailer—and his health condition, which satisfied Indiana's Medicaid disability criteria, impaired his ability to work. 839 N.E.2d at 707. Given the evidence of the father's medical and financial circumstances, and the State's failure to present evidence to the contrary, this court determined that there was no evidence that the father had the ability to pay child support and that his failure to do so was willful. *Id.*

Here, quite in contrast to the circumstances in *Marks*, Snyder did not have a demonstrated inability to work. As the trial court observed, although Snyder's doctors' notes verified that he had certain medical conditions and indicated that he was "unable to adequately perform normal duties of his job," Appellant's App. p. 53, nothing from these letters suggested that he was disabled or incapable of employment. Significantly, Snyder largely attributed his medical conditions to the September 14, 2007 incident with Tiller, yet as the State alleged and Snyder did not dispute, he failed to raise this issue with the trial court just weeks later in the September 24, 2007 hearing. Furthermore, although Snyder claimed to have been looking for work, he failed to present the very calendar which could potentially corroborate this claim, and the trial court was within its discretion to attribute little credibility to Snyder's testimony, especially in light of his prior contempt findings and failure to report certain income.

The trial court was similarly within its discretion to discredit Snyder's representations regarding his ability to pay. In spite of his alleged lack of income, Snyder has had available funds to, among other things, post \$2000 for his bond and pay over \$20,000 to purge a prior contempt finding and avoid a jail sentence.<sup>2</sup> Further, as the trial court found in its November 2005 report, Snyder owned and used funds to assist his wife in purchasing property, which the trial court determined was an additional attempt to avoid his child support obligations. In spite of Snyder's claim that his only source of income is the potential lawsuit with Tiller, the trial court was within its discretion to discredit this testimony, especially given Snyder's

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<sup>2</sup> It appears from the record that, in addition to the \$20,800 payment, Snyder made an additional \$10,400 payment to purge another contempt finding.

ability to find large sums of money when necessary, which he was able to do even after the suspension of his real estate license and the confrontation with Tiller. We find no abuse of discretion.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.